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SUBJECT: THE NETHERLANDS: EU DIGITAL SIGNATURE DIRECTIVE

REF: STATE 84614

1. Summary. Emboff met with Ministry of Economic Affairs official Martin Buys to discuss Dutch implementation of the directive. The GON is drafting legislation, therefore no public version is available. Buys said that the GON wishes to limit government involvement in electronic signatures, allowing market forces to be the largest determinant. End summary. Responses follow in the same order as the questions in paragraph 9 of Reftel.

2. The GON is drafting legislation, therefore no public version is available. Principle drafters include a judicial advisory board, the Council of State (Raad van State), the Ministry of Transportation, Public Works and Water Management, and the Ministry of Justice. The main concern of the Ministry of Transport (which deals with telecommunication) is the implementation of Article 3(3). This article requires member states to establish a system for supervision of certification-service-providers. According to Buys, the GON finds it difficult to implement Article 3(3) because Article 3(1) states that provision of certification services requires proper authorization. The GON is unsure of its legal authority, therefore it is attempting to implement Article 3(3) on a lower level, only requiring supervision of certification-service-providers offering advanced digital signatures.

3. The Ministry of Justice is working to implement Article 5(1), concerning the legality of electronic signatures. Digital signatures are already admissible in Dutch courts, due to previous legislation and what the Dutch term "freedom of evidence," giving wide scope to what is admissible in a court of law. The GON is more concerned with making digital signatures legally equal to handwritten signatures.

4. Recital 16 sets forth basic guidelines for the regulatory framework needed on intranet and internet. In the Netherlands, the discussion surrounding Recital 16 centers around the ability of the GON to place higher standards on government use than the directive requires. The GON determined that the private sector may choose to go beyond guidelines given in the directive, but that the government should not.

5. The Netherlands already has a voluntary non-licensing scheme through Trusted Third Party Group, TTP, a nationally operating IT service provider managed by the Dutch association for electronic commerce, ECPN (Electronic Commerce Platform Netherlands). This can be accessed via the website ecp.nl. The GON is concerned with keeping accreditation of certification-service-providers market-based, and is attempting to limit government involvement to the registration of certification service providers.

6. Article 9 committee members include Martin Buys, Ministry of Economic Affairs, and Ronald van der Luit, Ministry of Transportation, Public Works and Water Management. Buys said that the meeting of the Article 9 Committee in March was mostly "window dressing," and said that nothing substantive was discussed. The GON believes more important discussions are taking place in the standards environment, particularly EESSI.

7. Buys said that at the initiative of the UK representatives, representatives from Sweden, Germany, France and the Netherlands have agreed to meet the evening before the next Article 9 Committee meeting in June.

8. Most active participation in ETSI and CEN stems from private companies involved in the standardization process. Currently, advisory companies such as KPMG, Price Waterhouse-Coopers and others are involved.

19. The GON is considering implementing internationally recognized guidelines contained in Common Criteria (CC), developed by the Information Security Systems Organization. However, the GON is concerned with enforcement of Article 3(4). The Article deals with the conformity of secure signature-creation devices. Buys said that the GON remains uncertain regarding its ability to adequately address enforcement on this issue because it requires enforcement on a user-level.

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